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**September 26, 1994**

***BY HAND DELIVERY***

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W. -- Room 222  
Washington, D.C. 20554

**Re: Joint Proposal and Settlement Agreement  
Mobile Satellite Service Rulemaking  
CC Docket No. 92-166**

Dear Mr. Caton:

Mobile Datacom Corporation ("MDC"), by its attorneys, submits these comments concerning the "Joint Proposal and Settlement Agreement" ("Joint Proposal") filed in the above-referenced docket on September 9, 1994 by Motorola Satellite Communications, Inc., Constellation Communications, Inc., Mobile Communications Holdings, Inc. and TRW Inc., as well as the letter concerning the "Joint Proposal" filed on September 13, 1994 by Loral/QUALCOMM Partnership, L.P.

MDC has a direct interest in this proceeding because it is a radio determination satellite service ("RDSS") vendor in the same bands to be used by the mobile satellite service ("MSS") applicants. MDC is using RDSS technology to meet critical governmental and commercial requirements for positioning and related data communications. MDC has participated actively in this proceeding out of a concern that the Commission's licensing rules for MSS be as compatible as possible with the needs of RDSS service vendors so that the co-primary status of the two services can exist in practice.

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MDC was not made a party to the discussions among the current round of MSS applicants that led to the Joint Proposal, nor do we intend to comment on most elements of the proposal here. To the extent that our previous comments in this docket are inconsistent with the Joint Proposal, those comments speak for themselves. That said, however, MDC is obliged to address two important elements of the Joint Proposal that directly affect future competition in this market.

**A. The Commission Should Not Limit Future Competition By Guaranteeing That All RDSS/MSS Spectrum Will Go to the Current Applicants, No Matter How Few Actually Launch Systems.**

First, MDC strongly objects to those aspects of the Joint Proposal that would have the effect of permanently assigning all of the RDSS/MSS spectrum to the current group of applicants, no matter how many or how few of those applicants actually deploy and operate their proposed systems. The result could well be unreasonable and unnecessary concentration in the market for facilities-based MSS/RDSS service. For example, Section 1(f) of the Joint Proposal provides that "[i]f all of the CDMA systems cease to hold their construction permits or licenses, then the TDMA system should gain access to the entire 1610-1626.5 MHz band." See Joint Proposal at 2 (emphasis added). Similarly, Section 5 provides that "[i]f only one of the CDMA systems and the TDMA system become operational," any spectrum previously assigned to other CDMA systems would be available for reassignment "only" to those two remaining MSS systems. See *id.* (emphasis added). New applicants need not apply.

MDC can understand why the current group of applicants might prefer to foreclose for all time the opportunity for new parties to enter the RDSS/MSS market in competition with them. However, such an extraordinary result is neither required nor appropriate. Quite the contrary, the Commission should leave itself the flexibility to decide in the future whether -- based on actual market experience -- the public interest would best be served by assignment of any available spectrum to then-active operators, or instead to new entrants who would provide additional competition in the MSS market or serve new customer requirements.

MDC approaches this matter from the perspective of a company that will need to obtain space segment in the future to continue its RDSS operations. We have had discussions with each of the LEO applicants proposing to use CDMA technology, with the expectation that we will be able to use LEO space segment to serve our customer base. However, it may be necessary for us to look to new

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applicants (or even file an application ourselves) if it appears that LEO capacity serving our requirements will not actually be constructed by the current applicant group. We also can anticipate that other parties may be prepared to construct and operate RDSS/MSS space systems if for one reason or another several applicants in this round do not go forward as planned.

The Commission's Notice of Proposed Rulemaking set forth a more sensible approach to spectrum reassignment. Specifically, the Commission proposed that if only one CDMA system is constructed, then the additional 3.1 MHz of spectrum would be available for reassignment to either the TDMA system upon a showing of need or to a new applicant -- with this decision made in the future based on conditions at that time. Similarly, the Commission proposed that if no CDMA system is constructed by one of the initial applicants, then it would still limit the expansion of the FDMA/TDMA system so that it could "consider licensing an additional entity or entities in any unused 8.25 MHz band segment." See Notice of Proposed Rulemaking, 9 FCC Rcd 1094, 1112 (1994).

The Joint Proposal does not provide any justification for granting the current round of applicants the guaranteed monopoly over spectrum requested there. Such a result would be inconsistent with all past Commission licensing decisions, which have never reserved future spectrum for licensees without a contemporaneous showing of actual need. The Joint Proposal also would reduce competitive choice for companies such as MDC that will need to obtain RDSS/MSS space segment in the future -- it would mandate a potential duopoly or even monopoly in the RDSS/MSS band. And the Joint Proposal would encourage spectrum waste because MSS operators would not be required to show that they are operating their systems at or near full capacity in an efficient manner as part of a justification for additional spectrum. 1/

In summary, no matter how the Commission makes its initial assignments to the current MSS applicants, it should leave for the future all decisions regarding what to do with any spectrum left available due to the failure of

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1/ In its comments MDC has suggested that the Commission assign CDMA systems 11.35 MHz at the center of the RDSS/MSS band so that the CDMA center frequency would be permanently fixed at 1618.25 MHz. This approach would further increase the Commission's future flexibility to reassign spectrum between CDMA and FDMA/TDMA use based on actual experience and demonstrated customer requirements. See MDC Comments at 3-12.

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one or more of the current round of applicants to construct. In particular, the Commission should make clear its preference for competition in the provision of RDSS/MSS service, and not grant the prospect of permanent competitive advantage to the current applicants.

**B. The Commission Should Ensure that MSS Operators Make Space Segment Available For Resale on Reasonable and Non-Discriminatory Terms.**

As a related matter, MDC also is concerned by Section 12 of the Joint Proposal, which provides that "[n]on-geostationary MSS system operators may elect to provide space segment capacity on a non-common carrier basis." MDC is fully aware of the relationship between this issue and the efforts by certain of the applicants to raise financing for their systems, and it is not our intention to complicate that matter. We want to see all of the systems built. At the same time, however, the public interest would not be served if at the end of the day only one or two systems (including only one CDMA system) are operational, and those systems are free to deny service vendors such as MDC access to space segment for resale on reasonable terms. This is all the more true if, pursuant to the Joint Proposal, new entrants were permanently foreclosed from applying for spectrum themselves and competing with the incumbent MSS system (or systems) as facilities-based carriers.

As a result, no matter how the Commission resolves the common carrier issue, it at least must make clear that all MSS operators will be required to make space segment available for resale by other service vendors on reasonable and non-discriminatory terms, including space segment in increments suitable for RDSS positioning and data services. See MDC Comments at 14 (noting that it would be insufficient if MSS operators denied RDSS vendors access to bulk capacity space segment and instead provided service only on a per minute basis).

In short, as the Commission reviews the Joint Proposal and concludes its action in this docket, it should make certain that its decisions advance, rather than foreclose, competition in the RDSS/MSS band. It should protect the public

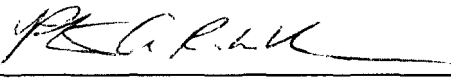
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interest in multiple facilities-based vendors, as well as opportunities for companies like MDC to provide service through the resale of RDSS/MSS capacity.

Respectfully submitted,

MOBILE DATACOM CORPORATION

By 

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cc: Attached Service List

## **CERTIFICATE OF SERVICE**

I, Patricia A. Green, hereby certify that I have on this 26th day of September, 1994, caused copies of the foregoing Letter to be delivered via hand delivery or by U.S. Mail (indicated with \*) to the following:

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A handwritten signature in cursive script, reading "Patricia A. Green". The signature is written in dark ink and is positioned above a horizontal line.

Patricia A. Green